

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

MASTER CASE NO. C09-037 MJP

**DECLARATION OF J. WESLEY
EARNHARDT IN SUPPORT OF
DEFENDANTS' MOTION TO
EXCLUDE THE PROFFERED EXPERT
TESTIMONY OF CHARLES D.
COWAN AND IRA HOLT**

Declaration of J. Wesley Earnhardt in Support of
Defendants' Motion to Exclude the Proffered Expert
Testimony of Charles D. Cowan and Ira Holt
(CV09-037 MJP)

HILLIS CLARK MARTIN & PETERSON P.S.
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1 I, J. WESLEY EARNHARDT, hereby declare as follows under penalty of
2 perjury:

3 1. I am an attorney at law licensed to practice in the State of New York. I am
4 a member of the firm of Cravath, Swaine & Moore LLP, counsel of record for
5 Defendants WaMu Asset Acceptance Corp. and WaMu Capital Corp. in this matter. I
6 submit this declaration in support of Defendants' Motion to Exclude the Proffered Expert
7 Testimony of Charles D. Cowan and Ira Holt. By virtue of my representation of
8 Defendants in this matter, I have personal knowledge of the facts set forth below, and
9 could and would testify competently to those facts if called to do so.
10

11 2. Attached as Exhibit 1 is a true and correct copy of the Expert Report of
12 Charles D. Cowan, Ph.D, dated March 2, 2012 and submitted on behalf of Plaintiffs in
13 this matter.
14

15 3. Attached as Exhibit 2 is a true and correct copy of the Expert Report of Ira
16 Holt, dated March 2, 2012 and submitted on behalf of Plaintiffs in this matter.

17 4. Attached as Exhibit 3 is a true and correct copy of the Expert Report of
18 George Ostendorf, dated March 30, 2012 and submitted on behalf of Defendants in this
19 matter. Exhibit 3 omits the exhibits to Mr. Ostendorf's report and contains certain
20 redactions, both of which are necessary in order to maintain the confidentiality of
21 borrower-specific loan-level financial and personal information contained therein.
22

23 5. Attached as Exhibit 4 is a true and correct copy of the Expert Report of
24 William E. Wecker, Ph.D, dated March 30, 2012 and submitted on behalf of Defendants
25 in this matter.

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1 6. Attached as Exhibit 5 is a true and correct copy of the survey template
2 produced to Defendants by Plaintiffs' counsel as part of the backup for Mr. Holt's expert
3 report.

4 7. Attached as Exhibit 6 [FILED UNDER SEAL] is a true and correct copy
5 of the survey results produced to Defendants by Plaintiffs' counsel as part of the backup
6 for Mr. Holt's expert report. This data was originally produced to Defendants as an SPSS
7 file. However, for purposes of compatibility, Defendants converted the file to an Excel
8 spreadsheet format, without otherwise altering its contents. One of the textual fields in
9 Exhibit 6, as originally produced to Defendants and attached hereto, was truncated (i.e.,
10 the text was cut off). After Defendants brought the issue to the attention of Plaintiffs'
11 counsel, Plaintiffs' counsel produced the untruncated text in a separate file. Defendants
12 thereafter incorporated the untruncated text into the corresponding fields of Exhibit 7, as
13 described below.

14 8. Attached as Exhibit 7 [FILED UNDER SEAL] is a more user-friendly
15 version of Exhibit 6 prepared by Defendants. Plaintiffs produced the data in Exhibit 6 in
16 a raw format that was not readily capable of being understood by a human user. For
17 example, it lacked descriptive labels to denote the questions from the survey (Exhibit 5)
18 to which the data in Exhibit 6 corresponded. In order to render the data usable,
19 Defendants systematically made certain non-substantive modifications to the raw data,
20 including adding labels to match the question number and question text from the survey
21 (Exhibit 5) to the corresponding answers in Exhibit 6. Defendants also made formatting
22 changes, such as altering the width of columns or replacing "NULL" or "Not Selected"

1 values with blank spaces so as to render the data more readable. In making these
2 modifications, Defendants did not knowingly alter in any way the substance of any of the
3 data originally contained in Exhibit 6. Defendants also incorporated into Column JE of
4 each sheet of Exhibit 7 certain untruncated data provided separately by Plaintiffs' counsel
5 to replace data that had been truncated when it was originally produced to Defendants.
6

7 9. Attached as Exhibit 8 is a true and correct copy of Washington Mutual
8 Home Loans' Conventional Underwriting Guidelines, dated August 17, 2006.

9 10. Attached as Exhibit 9 is a true and correct copy of Washington Mutual
10 Home Loans' Product and Pricing Guide, dated August 17, 2006.

11 11. Attached as Exhibit 10 is a true and correct copy of Plaintiffs' Opposition
12 to Defendants' Motion for Judgment on the Pleadings dated September 2, 2011 (Docket
13 No. 327).
14

15 I hereby declare, under penalty of perjury under the laws of the United
16 States of America, that the foregoing is true and correct.

17 DATED this 25th day of April, 2012, at New York, New York.
18

19
20 

21 J. Wesley Earnhardt
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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20 DATED this 25th day of April, 2012 at Seattle, Washington.

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